

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia (District) to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2016 Repl. & 2019 Supp.)), and the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2018 Repl.)), hereby gives notice of the adoption of amendments to Chapter 41 (Medicaid Reimbursement for Intermediate Care Facilities for Individuals with Intellectual Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this final rulemaking is to update Medicaid reimbursement requirements for Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID).

Previously, the rules governing reimbursement to ICFs/IID had specific rules in place governing what ICF/IID facilities would be paid if documentation of recertification was submitted after the requested deadline. Specifically, the rules required that: (1) late submission of documentation required for recertifications would result in payments at the rates that correspond to the lowest acuity level, Acuity Level 1 (Base), beginning on the first day following the expiration of the acuity level certification; and (2) DHCF would not make retroactive adjustments to the reimbursement rates for late submissions of recertification documentation. Providers have requested that DHCF ensure reasonable and fair payments to ICF/IIDs, claiming that application of the rules have been more restrictive than intended, and has complicated the cost reporting process for providers. DHCF is proposing to revise the rules to ensure that ICF/IID providers can be paid at a fair and reasonable rate based on the actual acuity level of the beneficiary. DHCF will also publish clarifying guidance on the recertification process on its website at dhcf.dc.gov.

These amended rules change existing reimbursement policy to enable DHCF to reimburse providers for care delivered at the appropriate reimbursement rate, even if recertifications are submitted late. DHCF believes this change will ensure fair and adequate reimbursement for ICF/IID providers that must recertify the acuity level assignments of beneficiaries in order to continue providing services.

Additionally, these amended rules remove the outdated reimbursement rate chart, replace it with language providing the location of current ICF/IID rates on the DHCF website, and add a brief description of the public notice process that DHCF must follow prior to making any updates to reimbursement rates. The prior rules contained a chart of the reimbursement rates for ICF/IID services, which could not realistically be updated with sufficient regularity to accurately display the current rates on a continuous basis. By striking the chart and instead directing providers to the updated Medicaid ICF/IID rates published online, DHCF can reduce confusion by ensuring continuous provider access to accurate ICF/IID reimbursement information published in a single location. This change also provides more flexibility and administrative simplicity to DHCF's rate change process and ensures the agency can make more timely updates as needed. This approach is consistent with the current notice requirements for most other Medicaid providers.

The changes associated with this rulemaking will have no corresponding fiscal impact.

A Notice of Emergency and Proposed Rulemaking was published in the *DC Register* on June 12, 2020 at 67 DCR 7536. No comments were received and no changes have been made.

The Director adopted these rules on September 21, 2020 and they shall become effective on the date of publication of this notice in the *D.C. Register*.

Chapter 41, MEDICAID REIMBURSEMENT FOR INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Subsection 4101.15 of Section 4101, ACUITY LEVEL ASSIGNMENTS, is amended to read as follows:

4101.15 In the event of delay in the submission or processing of documentation required for recertifications, as described in § 4101.14, DHCF shall continue to reimburse the ICF/IDD provider at the rate that corresponds to the expired acuity level assignment until the date that the recertification is processed and the final acuity level determination is made. DHCF shall publish guidance on the recertification process on its website dhcf.dc.gov.

Subsection 4102.16 of Section 4102, REIMBURSEMENT METHODOLOGY, is amended to read as follows:

4102.16 Reimbursement for ICF/IID services shall be made in accordance with rates published to the DHCF website at dhcf.dc.gov.

A new Subsection 4102.17 of Section 4102, REIMBURSEMENT METHODOLOGY, is added to read as follows:

4102.17 A public notice of ICF/IID services reimbursement rate changes shall be published in the *D.C. Register* at least thirty (30) calendar days in advance of the change. The notice shall include a link to the DHCF website and provide an opportunity for meaningful comment.

Subsection 4105.2 of Section 4105, REBASING, is amended to read as follows:

4105.2 Reimbursement rates shall be updated any time that the reimbursement rates are updated based on a rebasing, as described in § 4105.1. In accordance with the requirements set forth in §§ 4102.16 and 4102.17, public notice of ICF/IID services reimbursement rate changes shall be published in the *D.C. Register* at least thirty (30) calendar days in advance of the change and shall include a link to the DHCF website.